

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

UNITED STATES OF AMERICA

FILED UNDER SEAL

vs.

Criminal Action 2:17-cr-285(1)  
JUDGE JAMES L. GRAHAM

ABDIKARIN ALI

REPORT AND RECOMMENDATION

The United States of America and defendant Abdikarin Ali<sup>1</sup> entered into a plea agreement, executed pursuant to the provisions of Rule 11(c)(1)(A) of the Federal Rules of Criminal Procedure, whereby defendant agreed to enter a plea of guilty to Count 1 of the *Information*, which charges him with making false statements in connection with health care benefits in violation of 18 U.S.C. §§ 1035, 2.<sup>2</sup> On January 9, 2018, defendant, accompanied by his counsel, appeared for an initial appearance, arraignment, and entry of guilty plea. Defendant consented, pursuant to 28 U.S.C. §636(b)(3), to enter a guilty plea before a Magistrate Judge. *See United States v. Cukaj*, 2001 WL 1587410 at \*1 (6<sup>th</sup> Cir. 2001) [Magistrate Judge may accept a guilty plea with the express consent of the defendant and where no objection to the report and recommendation is filed]; *United States v. Torres*, 258 F.3d 791, 796 (8<sup>th</sup> Cir. 2001); *United States v. Dees*, 125 F.3d 261, 263-69 (5<sup>th</sup> Cir. 1997); *United States v. Ciapponi*, 77 F.3d

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<sup>1</sup> The body of the *Information*, ECF No. 3, reverses the order of defendant's names. The parties agreed at the hearing that this is a typographical error, and the Government's unopposed oral motion to amend the *Information* to correct that error was granted.

<sup>2</sup> Under the *Plea Agreement*, ECF No. 4, defendant agrees to a restitution obligation and acknowledges that deportation is likely. The *Plea Agreement* also includes an appellate waiver provision which preserves only certain claims for appeal but which does not limit defendant's right to pursue a claim under 28 U.S.C. § 2255. The parties have entered into a *Pretrial Diversion Agreement*, ECF No. 5. That agreement was amended at the hearing to provide that the \$100 special assessment (erroneously referred to as the "cost of prosecution," *id.* at p. 4) is to be paid to the Office of the Clerk of the Court.

1247, 1251 (10<sup>th</sup> Cir. 1996). Defendant also waived his right to an indictment in open court and after being advised of the nature of the charge and of his rights. See Fed. R. Crim P. 7(b).

During the plea proceeding, the undersigned observed the appearance and responsiveness of defendant in answering questions. Based on that observation, the undersigned is satisfied that, at the time he entered his guilty plea, defendant was in full possession of his faculties, was not suffering from any apparent physical or mental illness, and was not under the influence of narcotics or alcohol.

Prior to accepting defendant's plea, the undersigned addressed defendant personally and in open court and determined his competence to plead. Based on the observations of the undersigned, defendant understands the nature and meaning of the charge in the *Information* and the consequences of his plea of guilty to that charge. Defendant was also addressed personally and in open court and advised of each of the rights referred to in Rule 11 of the Federal Rules of Criminal Procedure.

Having engaged in the colloquy required by Rule 11, the Court concludes that defendant's plea is voluntary. Defendant acknowledged that the plea agreement signed by him, his attorney and the attorney for the United States and filed on December 18, 2017, represents the only promises made by anyone regarding the charge in the *Information*. Defendant was advised that the District Judge may accept or reject the plea agreement and that, even if the Court refuses to accept any provision of the plea agreement not binding on the Court, defendant may nevertheless not withdraw his guilty plea.

Defendant confirmed the accuracy of the material aspects of the statement of facts supporting the charge, which is attached to the *Plea Agreement*. He confirmed that he is pleading guilty to Count 1 of the *Information* because he is in fact guilty of that offense. The Court concludes that there is a factual basis for the plea.

The Court concludes that defendant's plea of guilty to Count 1 of the *Information* is knowingly and voluntarily made with understanding

of the nature and meaning of the charge and of the consequences of the plea.

It is therefore **RECOMMENDED** that defendant's guilty plea to Count 1 of the *Information* be accepted. Decision on acceptance or rejection of the plea agreement was deferred for consideration by the District Judge.

**In light of the *Pretrial Diversion Agreement*, the case will not be referred at this time for the preparation of a presentence investigation report.**

If any party seeks review by the District Judge of this *Report and Recommendation*, that party may, within fourteen (14) days, file and serve on all parties objections to the *Report and Recommendation*, specifically designating this *Report and Recommendation*, and the part thereof in question, as well as the basis for objection thereto. 28 U.S.C. §636(b)(1); F.R. Civ. P. 72(b). Response to objections must be filed within fourteen (14) days after being served with a copy thereof. F.R. Civ. P. 72(b).

The parties are specifically advised that failure to object to the *Report and Recommendation* will result in a waiver of the right to *de novo* review by the District Judge and of the right to appeal the decision of the District Court adopting the *Report and Recommendation*. See *Thomas v. Arn*, 474 U.S. 140 (1985); *Smith v. Detroit Federation of Teachers, Local 231 etc.*, 829 F.2d 1370 (6th Cir. 1987); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

January 9, 2018  
Date

s/ Norah McCann King  
Norah M<sup>c</sup>Cann King  
United States Magistrate Judge